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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/637,097
Filing Date: August 08, 2003
Appellant(s): ZHENG, YU

Raymond Sun
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 1, 2007 appealing from the Office action mailed July 24, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed. Appeal Brief filed after a non-final rejection which was sent after the filing of an RCE.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUNDS OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claims 18, 20-23 and 28 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims1-4 of U.S. Patent No. 6,604,537.

Claims 18, 20-22 and 28 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 10, 11, 13, 15, 17-19, 21, 23 and 24 of U.S. Patent No. 6,209,557.

Claims 18, 20-23 and 28 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 8 and 12 of U.S. Patent No. 5,778,915.

Claims 18, 20-23 and 28 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,851,439 in view of Wan.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,579,799	Zheng	12-1996
5,560,385	Zheng	10-1996

5,249,592	Springer et al	10-1993
5,411,046	Wan	5-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 18, 20-22 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 9-12 of U.S. Patent No. 5,579,799. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and patent teach a pair of foldable panels attached at adjacent edges thereof via sleeves. Since the frames of the folding panels are themselves foldable it would be obvious to twist and/or fold them in a manner wherein concentric rings are formed. It also would be obvious to add the fabric material onto the frame so that it and the frame form a flat structure, for aesthetic reasons, etc and obvious to position the adjacent panels in various configurations, including at actuate angles with respect to one another, depending on the structural shape desired.

Claims 18, 20-23 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 5 of U.S. Patent No. 5,560,385. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and patent teach a pair of foldable panels attached at adjacent edges thereof via stitching and sleeves. Since the frames of the folding panels are themselves foldable it would be obvious to

twist and/or fold them in a manner wherein concentric rings are formed. It also would be obvious to add the fabric material onto the frame so that it and the frame form a flat structure, for aesthetic reasons, etc and obvious to position the adjacent panels in various configurations, including at actuate angles with respect to one another, depending on the structural shape desired.

Claims 18, 20-23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Springer et al in view of Wan. Springer teaches a collapsible structure (Fig. 2) comprising: a flat side member (32) and a flat base member (34) hingedly attached via connectors (36). The members are foldable and include fabric there over. For claim 18, Springer fails to teach that the hinge between the members is comprised of two sleeves and stitching and that each frame includes a separate fabric material there over. Wan teaches the use of sleeves and stitching (see Fig. 4) to hingedly attach collapsible framed members together; the frames each including separate fabric material (30) thereover. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure of Springer by using alternate hinge means between its frame members, i.e. using the sleeve/stitching members of Wan therein instead of the connectors presently used, since these hinge means are functionally equivalent and would work equally well between the members of Springer. Furthermore, if the material and sleeves of Wan are used with the foldable frames of Springer, the structure assembly as a whole would be simplified, using fewer separate parts to form the structure and the hinge would be more supportive, extending

the entire length of the frames. Furthermore, because of the positioning of the members, the flexible hinge angle of Springer in view of Wan would be an acute angle.

(10) Response to Argument

First, the examiner contends that the double patenting rejections do point out both the similarities and differences between the patents and disclosed application and do include obvious statements with the appropriate motivation statements. Second, as discussed before, the term "base" is merely nomenclature. Note: the description of the members of a structure depends on the positioning of the structure as a whole. For example, by setting one of the disclosed panels of the cited references on a floor surface, it inherently becomes a base member. Since all of the structural limitations are met in the claims of the patents, all of the "positioning" terms would inherently be met as well by positioning the structure/panels as needed. As for the "flat" limitation, as stated above, it also would be obvious to add the fabric material onto the frames of the disclosed panels so that it and the frames form flat structures, for aesthetic reasons, etc. Furthermore, when placing the material taut over the frames, the frame/material panels would inherently be flat. Third, that some of the cited reference claims contain additional limitations is irrelevant. The claims of the instant application are in "comprising" format and therefore are "open" ended; therefore, no "conversion" of the patents' structural features are needed. The double patenting rejection is over the instant application's claims and the claims of the cited references contain the features disclosed therein and therefore are obvious variants of each other.

Finally, the hinged manner in which the patents' panels are attached would inherently allow them to be located at acute angles and to form enclosures (a limitation which is not present in the claims).

Addressing the art rejection is made under 103 using Springer et al in view of Wan: the examiner contends that with the combination of these references, the "separate fabric material" of the frame members limitation would be met. The material pieces of Wan would be attached to a respective frame member of Springer and each piece includes a sleeve which when attached together form a hinge.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Janet Wilkens

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